

110 FERC ¶ 61,022
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suede G. Kelly.

Midwest Independent Transmission
System Operator, Inc.,
PJM Interconnection, L.L.C., *et al.*

Docket No. ER05-6-012

Midwest Independent Transmission
System Operator, Inc.,
PJM Interconnection, L.L.C., *et al.*

Docket No. EL04-135-014

Midwest Independent Transmission
System Operator, Inc.,
PJM Interconnection, L.L.C., *et al.*

Docket No. EL02-111-032

Ameren Services Co., *et al.*

Docket No. EL03-212-028

ORDER GRANTING EMERGENCY MOTION FOR INTERIM RELIEF

(Issued January 14, 2005)

1. On December 20, 2004, Ormet Primary Aluminum Corporation (Ormet)¹ filed an emergency motion requesting that the Commission direct changes to the implementation of the Seams Elimination Charge/Cost Adjustments/Assignments (SECA) rate as applied to Ormet (a sub-zonal rate inside AEP's zone). In this order, we grant interim rate relief for Ormet subject to refund or surcharge pending the final outcome of proceedings involving compliance filings to implement the SECA. This order benefits customers by preventing immediate potentially irreversible impacts on Ormet while ensuring that Ormet is subject to the rate for transmission service that is ultimately found to be just and reasonable.

¹ Ormet operates an aluminum reduction facility and an adjacent rolling mill in Hannibal, Ohio.

I. Background

2. In an order issued November 18, 2004,² the Commission adopted the SECA, a transitional rate mechanism that had been defined in prior orders and is designed to the recover lost revenues associated with the elimination of rate pancaking between the regional transmission systems operated by PJM Interconnection, L.L.C. (PJM) and Midwest Independent Transmission System Operator, Inc. (Midwest ISO). The SECA would take effect December 1, 2004, and recover lost revenues from transmission customers in each license plate pricing zone in proportion to the benefits those customers will realize as a result of the elimination of rate pancaking. Among other things, the SECA adopted in the November 18 Order may be implemented on a sub-zonal basis (separate SECA rates may be derived for customers in a zone to reflect the relative benefits among customers). On December 13, 2004, American Electric Power Service Corporation (AEP) submitted a compliance filing to implement the SECA rate for its pricing zone, including a sub-zonal SECA rate for Ormet.

II. Ormet's Motion

3. Ormet, which has been in Chapter 11 bankruptcy since the beginning of the year, states that it would be subject to a SECA charge of nearly \$1,000,000 per month commencing on January 20, 2005, in accordance with AEP's recently submitted SECA compliance filing. Ormet claims that it will be unable to make these payments and, as a result, could be forced to close its operation, potentially leading to the unemployment of its workers and loss of benefits for those employees and their families. Due to this potentially severe economic distress, Ormet requests expedited Commission action by January 14, 2005.

4. Ormet raises several concerns about the SECA mechanism in general and the calculation of its specific sub-zonal SECA obligation. Ormet asserts that its nearly \$1,000,000 per month SECA obligation is due to two factors: (1) AEP's use of an Ormet-specific sub-zone for the calculation of the SECA charges; and (2) a difference between its 2002 test year purchases from non-AEP sources (which are used to derive the SECA rate) and Ormet's current power purchases. Ormet also indicates that due to the sub-zonal calculations, its SECA rate is 20 times more than the SECA rate applicable to the rest of the AEP zone. Ormet states that its current power purchases from non-AEP sources are significantly less than its power purchases from such sources in the 2002 test year. Ormet asks the Commission to consider three possible relief options: (1) the elimination of sub-zonal SECA rates for the AEP zone; (2) elimination of the SECA mechanism altogether as requested in its request for rehearing of the November 18 Order;

² Midwest Independent Transmission System Operator, Inc., *et al.*, 109 FERC ¶ 61,168 (2004) (November 18 Order).

or (3) permission for Ormet to pay a smaller SECA rate for an interim period (possibly the rate applicable to the rest of the AEP pricing zone) subject to refund or surcharges after proceedings to investigate any appropriate adjustments to its SECA obligation. Ormet also indicates that the differences in its power usage from non-AEP sources at present compared to the SECA test year warrant adjustments to its SECA obligation as provided for in prior orders on the SECA. Ormet requests Commission action on its motion on or before January 14, 2005.

III. Responsive Pleadings

5. Timely answers were filed by Wisconsin Public Service Corporation and Upper Peninsula Power Company (collectively, WPSC/UPPC), Detroit Edison Company (Detroit Edison), Wabash Valley Power Association (Wabash), American Municipal Power-Ohio (AMP-Ohio), American Electric Service Corporation (AEP), Consumers Energy Company (Consumers), Exelon Corporation (Exelon), Quest Energy L.L.C. and WPS Energy Services, Inc. (collectively, “Quest”), Midwest ISO Transmission Owners (Midwest ISO TOs).

6. On January 5, 2005, Duke Energy North America L.L.C. and Duke Energy Trading L.L.C. (Collective, Duke) filed an answer to comments submitted by Quest.

7. On January 5, 2005, Ormet filed a response to the answers and comments filed in response to its emergency motion.

8. On January 7, 2005, The Official Committee of Unsecured Creditors of Ormet Corporation filed a motion to intervene out of time and comments in support of Ormet’s Emergency Motion.

9. Several commenters indicate that they are sympathetic to Ormet’s situation but believe that the issue is a more general problem with the SECA rather than specific to Ormet. While they take no position on what types of relief are appropriate for Ormet, they assert that Ormet’s situation is not entirely unique and state that the Commission should not attempt a singular “quick fix” in making adjustments to Ormet’s SECA. They claim that such adjustments (for example, by lowering Ormet’s obligation) would simply shift the financial burden to others, because the SECA rate is a zero sum lost revenue recovery mechanism collecting certain amounts from one set of entities and distributing those moneys to others. They request that the Commission recognize the fundamental problems of the SECA and seek to correct that core issue.³

³ These comments and concerns generally reflect the answers filed by WPSC/UPPC, Detroit Edison, Quest Energy, and AMP-Ohio.

10. The Midwest ISO TOs additionally request that if the Commission decides to grant relief for Ormet, it should order AEP and other entities within AEP's zone to resolve the issue, rather than simply reducing or eliminating Ormet's obligation, the latter of which would result in reduced lost revenue compensation for the Midwest ISO TOs. They also state that any consideration of Ormet's request for adjustments based on changes since the 2002 test year should not occur on an expedited basis in response to the emergency motion. They assert that such adjustments involve issues of material fact that would warrant a full hearing.

11. Consumers notes that PJM has stated that it will not bill the SECA rates before Midwest ISO does and that Midwest ISO has stated that it would take at least 90-120 days from December 17, 2004, to implement SECA billing. Therefore, Consumers questions the alleged urgency of Ormet's issue and its request for action prior to January 14, 2005.

12. However, AEP and Exelon argue that Ormet's request should be rejected as a collateral attack on the Commission's prior orders instituting the SECA. AEP claims that Ormet's request to pay the general AEP SECA rate rather than a sub-zonal rate is unjustified because Ormet has not been within AEP's retail service territory, or within the AEP control area (Ormet's load is dynamically scheduled), since 1999. Exelon requests that any relief granted Ormet should be conditioned on Ormet being financially responsible for the just and reasonable rate ultimately determined by the Commission, through surcharges with interest, if necessary.

IV. Discussion

13. We agree with commenters that specific adjustments to Ormet's SECA rate should not be addressed singularly on an Ormet-specific basis. Therefore, any adjustments to Ormet's SECA rate will be considered along with all the other comments and protests received in response to the SECA filings made in compliance with the November 18 Order. However, we are mindful of Ormet's claims that the proposed compliance SECA rates could lead to irreversible economic harm, even potentially forcing it to cease operations. Therefore, due to such potentially irreversible harm to Ormet upon implementation of AEP's proposed compliance SECA rate, we find that interim rate relief is warranted. Accordingly, given their commitment to potential refunds or surcharges noted above, we will allow Ormet to pay the SECA rate applicable to AEP for service to its native load until Ormet's specific sub-zonal SECA is finalized, subject to and conditioned upon refunds or surcharges based on the outcome of the SECA compliance filing proceeding and any further proceedings initiated to implement the SECA.

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The Commission orders:

Ormet's motion for interim relief is hereby granted as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.